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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,765	07/01/2003	Leonard R. Sokola SR.	SOK-101US	2171

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/611,765	Applicant(s) SOKOLA, LEONARD R.	
	Examiner Stephen J. Castellano	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☒ Claim(s) 2,9,14,15,21 and 23 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>8/4/03</u> . | 6) <input type="checkbox"/> Other: ____. |

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The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the bowl as stated in claim 2, the likeness being affixed to the upper surface, lower surface and edge of a shallow container as stated in claim 9, the likeness resembles a walrus, hippopotamus, whale, imaginary creature or an obese person as stated in claims 14 and 15, the motivational message as part of a graphical diet reminder as stated in claim 21 and the hollow statuette of a pig removably affixed to the border section, the statuette having a bottom and a removable top as stated in claim 23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note that claim 23 mixes elements of the Fig. 3 embodiment wherein the statuette is removably affixed and elements of the Fig. 4 embodiment wherein the statuette has a bottom and a removable top. All the elements of claim 23 are taught, just not in one embodiment or specie.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 2, 9, 14, 15, 21 and 23 are objected to because the various features of these claims as discussed above are not shown in a drawing. No new matter should be entered.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Buj.

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Buj discloses a dinnerware article (plate and eating utensils) adapted to receive food, comprising: a shallow container (plate or dish), a raised likeness of a creature (statuette of dolphin 2) affixed to the upper surface and a graphical diet reminder on the upper surface (spoon 3 and fork 6).

Re claim 8, the raised likeness of a creature can be either the dolphin 5 or 8 on the spoon or fork, respectively.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buj.

Buj discloses the invention except for the resemblance of one of a walrus, hippo or whale and resemblance of a pig. It would have been obvious to modify the resemblance of a dolphin to be another animal (walrus, hippo or whale and a pig) as a matter of design choice and as a matter of little criticality since the application teaches a wide variety of different animals.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buj in view of Goff et al. (Goff).

Buj discloses the invention except for the resemblance of one of an imaginary creature and an obese person. Goff discloses a butter dish with imaginary creatures (mermaids). It would have been obvious to modify the resemblance of a dolphin to be an imaginary creature (mermaid) as a matter of design choice and as a matter of little criticality since the application teaches a wide variety of different animals both real and imaginary.

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Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buj in view of Gruneisen, III (Gruneisen).

Buj discloses the invention except for the likeness being hollow. Gruneisen teaches a container that resembles a basketball that is hollow and has a bottom and a removable top. It would have been obvious to modify the likeness of the dolphin to be hollow and have a bottom and a removable top as motivated by the reduced weight and access to a separate compartment that can provide storage adjacent to the shallow container.

Claims 13 and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buj in view of Brownell.

Buj discloses the invention except for graphical diet reminder on the central section and the graphical diet reminder indicating a breakdown of diet according to food categories, comprising an image of a food pyramid, comprising a motivational message and comprising numerical nutritional information. Brownell teaches a food pyramid shaped plate. It would have been obvious to shape the plate of Buj to be triangular and to include compartments corresponding to sizes of food groups in order to remind the consumer of proper nutritional eating habits.

Claims 1, 10, 13 and 19-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brownell in view of Buj and Gruneisen.

Brownell discloses a dinnerware article adapted to receive food, comprising: a plate having an upper surface with a center or center section and a border section adjacent and surrounding the center section, the border section extending to the edge, an image of a food pyramid on the central section as the compartments form a pyramid shape. Insofar as the so

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called pyramid of the present invention is triangular in shape, the triangular shape of the central section defines the pyramid. Brownell discloses the invention except for the removably affixed hollow statuette of a pig and removable top of the statuette. Buj teaches an animal statuette and Gruneisen teaches a hollow removable statuette with a removable top. It would have been obvious to add a removable hollow statuette to provide another compartment of aesthetically pleasing appearance to provide an added area for storage that has ready access through a removable top. It would have been obvious to make the statuette resemble a pig or any other animal as motivated by design choice and personal preference as no criticality has been associated with the pig.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc